

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

EDWARD BUTOWSKY §
§ CIVIL ACTION No. 4:21CV774
v. §
§
U.S. DEPT. OF JUSTICE, et al. § JUDGE SEAN D. JORDAN
§

**DEFENDANTS' FIRST AMENDED ANSWER
AND AFFIRMATIVE DEFENSES**

Defendants, the United States Department of Justice (“DOJ”) and the U.S. Department of Homeland Security (“DHS”) hereby answer the numbered paragraphs of the Original Complaint [ECF 1], as follows:

I.
JURISDICTION AND VENUE

1. This paragraph contains Plaintiff's conclusions of law regarding jurisdiction, to which no response is required.
2. This paragraph contains Plaintiff's conclusions of law regarding venue, to which no response is required.

II.
PARTIES

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
4. Defendant DOJ admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

5. Defendant DHS admits the first and third sentences of this paragraph. The second sentence consists of Plaintiff's legal conclusions, to which no response is required.

III.
STATEMENT OF FACTS

6. Defendants admit that Plaintiff submitted a Freedom of Information Act ("FOIA") request dated August 17, 2021, to multiple entities. Defendants respectfully refer the Court to this request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant DOJ avers that the Office of Information Policy ("OIP") acknowledged receipt of this request by letter dated September 2, 2021.¹ Defendant DOJ admits that OIP has not yet issued a final response. Defendant DOJ avers that the Office of Inspector General ("OIG") acknowledged receipt of this request by letter dated August 19, 2021. Defendant DOJ admits that OIG has not yet issued a final response. Defendant DOJ avers that the Office of Professional Responsibility ("OPR") received Plaintiff's FOIA request on August 18, 2021. Defendant DOJ avers that OPR issued a final response on October 27, 2021. Defendant DOJ avers that the Office of Legal Counsel ("OLC") received Plaintiff's FOIA request on August 18, 2021. Defendant DOJ admits that OLC has not yet issued a final response. Defendant DOJ admits that the Executive Office for United States Attorneys ("EOUSA") has not yet

¹ OIP's Initial Request Staff is responsible for processing FOIA requests for records within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), and the Associate Attorney General (OASG), and the Offices of Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO).

issued a final response. Defendant DHS avers that Customs and Border Protection (“CBP”) denied this request by letter dated August 24, 2021.

7. Defendants admit that Plaintiff submitted an additional un-numbered part to his 26-part FOIA request dated August 17, 2021, to multiple entities. Defendants respectfully refer the Court to this un-numbered part of the request for a complete and accurate statement of its contents and deny any allegations inconsistent with it. Defendant DOJ avers that OIP acknowledged receipt of this un-numbered part of the request by letter dated September 2, 2021. Defendant DOJ admits that OIP has not yet issued a final response. Defendant DOJ avers that OIG acknowledged receipt of this un-numbered part of the request by letter dated August 19, 2021. Defendant DOJ admits that OIG has not yet issued a final response. Defendant DOJ avers that OPR received this un-numbered part of the request on August 18, 2021. Defendant DOJ avers that OPR issued a final response on October 27, 2021. Defendant DOJ avers that OLC received this un-numbered part of the request on August 18, 2021. Defendant DOJ admits that OLC has not yet issued a final response. Defendant DOJ admits that EOUSA has not yet issued a final response. Defendant DHS avers that CBP denied this request by letter dated August 24, 2021.

COUNT I

8. Defendants incorporate by reference their responses to ¶¶ 1 through 7 as though set forth in full herein.

9. This paragraph sets forth conclusions of law to which no response is necessary. To the extent a response is deemed necessary, Defendants deny Paragraph 9 in its entirety.

REQUEST FOR RELIEF

10. This paragraph sets forth Plaintiff's request for relief to which no response is necessary. To the extent that any portion of this paragraph is deemed to contain an allegation of fact or a response is deemed necessary, Defendants deny that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiff is not entitled to compel the production of records or information exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).
2. Plaintiff is not entitled to remedies beyond what is provided for in the FOIA. *See* 5. U.S.C. § 552.
3. Plaintiff has failed to properly exhaust administrative remedies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ Andrea L. Parker

ANDREA L. PARKER

Assistant United States Attorney